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Attorney for Defendant,
MICHAEL MIKEL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOHN LAW

Plaintiff,

v.

LARRY HARVEY, MICHAEL MIKEL,
PAPER MAN LLC, and BLACK
ROCK CITY, LLC,

Defendants.

CASE NO. C-07-00134

**DEFENDANT MICHAEL MIKEL'S
JOINDER IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND THE
COMPLAINT OF CO-DEFENDANTS,
LARRY HARVEY AND BLACK ROCK
CITY, LLC**

Date: TBD
Time: TBD

Hon. William H. Alsup

Defendant, Michael Mikel hereby joins in and adopts the opposition of co-defendants Larry Harvey and Black Rock City, LLC to plaintiff's motion to amend the complaint. In this regard, defendant Mikel states that the arguments of co-defendant Black Rock City, LLC that establish the defects in plaintiff's claim for cancellation of the service marks at issue also apply with equal force to plaintiff's second claim for relief, which appears to attempt to state a claim against Mikel alone. Similarly, Mikel adopts the arguments of co-defendant Larry Harvey that establish the defects in plaintiff's attempts to bring claims arising out of the governance of the

1 Paper Man LLC, as those claims hopelessly confuse individual and derivative causes of action.
2 Further, the plaintiff's attempts to rely on a covenant of good faith and fair dealing that is
3 implied partnership and Paper Man agreements, including the fraud-based claims and the Tenth
4 Claim for Relief, are also defective: They violate the established rule that the covenant of good
5 faith cannot be used to prohibit a party from doing that which is expressly permitted by
6 agreement. *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.*, 2 Cal.4th
7 342, 374 (1992); *Third Story Music, Inc. v. Waits*, 41 Cal.App.4th 798, 802 (1995); 1 Witkin,
8 *Summary of California Law* (Contracts), § 743, at 448 (9th ed. 2003 Supp.).

9 The plaintiff's proposed amended complaint does not remedy the legal deficiencies that
10 the Court found in his original pleading. Indeed, plaintiff's lengthy and elaborate allegations
11 regarding the history of the Burning Man event demonstrate that there are no facts that could
12 cure the defects in his claims. The motion to amend the complaint should be denied, and this
13 matter dismissed.

14 DATED: November 2, 2007

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16 By: s/ Lawrence J. Rose

17 Lawrence J. Rose

18 Attorney for Defendant,
19 MICHAEL MIKEL
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